

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIGUEL ANGEL CARREON-RICO,

Defendant.

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8:09CR308

MEMORANDUM AND ORDER

This matter is before the court on the defendant's motion to vacate under [28 U.S.C. § 2255](#), Filing No. [59](#). Under the *Rules Governing Section 2255 Proceedings for the United States District Courts* ("2255 Rules"), the court must perform an initial review of the defendant's § 2255 motion. See 28 U.S.C. § 2255, Rule 4(b). The rules provide that unless "it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court," the court must order the United States Attorney to respond to the motion. *Id.*

The defendant entered a plea of guilty to a charge of possession of 50 grams of more of methamphetamine (actual) and was sentenced to the mandatory minimum sentence of 10 years. His sentence was affirmed on appeal. In his § 2255 motion, the defendant alleges that he received ineffective assistance of counsel in connection with his guilty plea and sentencing, as well as on direct appeal.

On initial review, the court finds that "it does not plainly appear that the defendant is entitled to no relief," and that the government should be required to answer. On receipt of the government's answer, the court will determine (a) whether to order the parties to submit briefs on the merits, so that the defendant's claims may be resolved on the basis

of the record and briefs, or (b) whether an evidentiary hearing is required. See Rule 8(a) of the *Rules Governing Section 2255 Proceedings for the United States District Courts*.

THEREFORE, IT IS ORDERED:

1. On initial review, the court finds that summary dismissal is not appropriate.
2. The United States shall file an answer to the defendant's § 2255 motion within 21 days of the date of this order.

DATED this 9th day of June, 2011.

BY THE COURT:

s/Joseph F. Bataillon
Chief United States District Judge

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